

[*Webb v. Quantum Resources, Inc.*, 93-ERA-42A \(ALJ Oct. 20, 1993\)](#)
[Law Library Directory](#) | [Whistleblower Collection Directory](#) | [Search Form](#) | [Citation Guidelines](#)

U.S. Department of Labor
Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

DATE ISSUED: October 20, 1993
Case No.: 93-ERA-42A

In The Matter of

Charles A. Webb
Complainant

v.

Quantum Resources, Inc.:
Respondent

RECOMMENDED DECISION AND ORDER
REJECTING RELEASE AND SETTLEMENT AGREEMENT

On April 7, 1993 Complainant Charles A. Webb filed a complaint of job discrimination pursuant to section 211 of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851, against Carolina Power & Light Company and Quantum Resources Corporation. On September 24, 1993 Complainant filed a Notice of Withdrawal With Prejudice of Respondent Quantum Resources, Inc., based on a settlement agreement entered into by and between Complainant and Quantum Resources Corporation. By order of Severance dated October 15, 1993 the claims against the two respondents were severed.

I

Decisions of the Secretary of Labor have drawn a distinction between unilateral dismissals of ERA complaints under Rule 41 (a)(1)(i) of the Federal Rules of Civil Procedure and dismissals based on settlements which require the approval of the Secretary. See Brock et al. v. Tennessee Valley Authority, Case No. 90-ERA19, Sec. Fin. Ord. of Dis., June 28, 1993; Mosbaugh v. Georgia Power Co., Case No. 90-ERA-58, Sec. Fin. Dec. and Ord., September 23, 1992. In the instant case, although the Notice of Withdrawal is signed only by Complainant's counsel, it is supported by a Release and Settlement Agreement entered into between the parties, which has been submitted for in

camera review, and is coupled with a motion pursuant to 29 C.F.R. § 18.56 that the settlement agreement be hereafter maintained in a restricted access portion of the record. Accordingly, I construe Complainant's filing of September 24 as a motion for approval of the settlement agreement and for an order dismissing with prejudice Complainant's ERA claim against Quantum Resources Corporation (QRC).

[Page 2]

II

I have reviewed the terms of the settlement agreement. Considering that both parties are represented by competent counsel and that these are in the best position to know the strength of their respective cases, I have no reason to believe that the agreement is not fair, adequate, or reasonable. Thus, I would recommend approval of the settlement, but for the fact that the parties have also agreed to keep "the terms of the agreement and the settlement agreement itself" confidential. The confidentiality provision of the agreement presents two questions: (1) whether the agreement should be approved in its entirety, with the confidentiality enforced through a protective order; and, if not, (2) whether the Secretary may unilaterally strike the confidentiality provision and approve the agreement as so modified.

III

The Secretary has repeatedly rejected confidentiality provisions on the ground that the Freedom Of Information Act requires Federal agencies to disclose requested records unless exempt from disclosure under the Act. See Mitchell v. Arizona Public Service Co., Case Nos. 92-ERA 28, 29, 35, 55, Sec. Fin. Ord. Approving Settlement Agreement, June 28, 1993; Plumlee v. Alveska Pipeline Service Co., Case No 92-TSC-7, Sec. Fin. Ord. Approving Settlements, Aug. 6, 1993. Moreover, in the instant case there is an additional ground for denying the parties' motion to maintain the settlement agreement in a restricted access portion of the record. Whatever may be the standard for denying public access to the agreement, See Rushford v. New Yorker Magazine, Inc., 846 F.2d 249 (4th Cir. 1988), the parties have not presented any reasons for doing so in this case. See Vogel v. Florida Power Corp., Case No. 90-ERA-49, Sec. Fin. Ord. Approving Settlement, slip op. at 3 n.2, March 12, 1991. Accordingly, it is my recommendation that the confidentiality provision of the settlement agreement be rejected, and the motion to maintain the agreement in a restricted access portion of the record be denied. In regard to this motion, I note that a Protective Order Establishing Restricted Access Portion of Record was issued on October 18, 1993, in order to preserve the question for the Secretary's decision.

IV

The above conclusion gives rise to the second question, whether the Secretary should strike the confidentiality provision of the settlement agreement and approve the remainder without obtaining the consent of the other two parties to the modification. The

secretary has claimed the power to do so. See Polizzi v. Gibbs & Hill, Inc., Case No. 87-ERA-38, Sec. Ord. Rejecting in Part and Approving in Part Settlement Submitted by the Parties and Dismissing Case, July 18, 1989. However, in Macktal v. Secretary of Labor, 923 F.2d 1150, 1154 (5th Cir. 1991) the court denied the existence of such a power, as the antithesis of the consensual settlement process contemplated by the statute. The court held that, in considering a settlement agreement under the

[Page 3]

ERA the Secretary may either consent or not consent to the settlement as written, or seek the consent of the parties to a proposed modification. See also Thompson v. U.S. Department of Labor, 883 F.2d 551, 557 (9th Cir. 1989).

Although Macktal and Thompson are not controlling because the instant case arises in the Fourth Circuit, they provide a persuasive analysis of the Secretary's authority to approve settlements under the ERA. Moreover, there is no basis for a finding that the confidentiality provision is not a material term of the agreement between the parties, in the sense that it is so unimportant that they would not mind it if the provision were deleted without their consent.

IV

By reason of the foregoing, it is recommended that the Secretary (1) deny the motion of the parties to maintain their Release and Settlement Agreement in a restricted access portion of the record; and (2) reject the Release and Settlement Agreement as well, unless the parties indicate to the Secretary their consent to making their Agreement part of the public record in this case.

Recommended Order

1. The motion of Charles A. Webb and Quantum Resources Corporation to maintain their Release and Settlement Agreement in a restricted access portion of the record is Denied.

2. The motion of Charles A. Webb and Quantum Resources Corporation to approve their Release and Settlement Agreement and to dismiss the captioned case without prejudice is Denied.

NICODEMO DE GREGORIO
Administrative Law Judge

NDG/sjn